IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WA.No. 222 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.27175/2006 Dated 07/11/2006
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APPELLANT:
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1. THACHADI SOMAN, S/O. VELAYUDHAN,
AGED 56 YEARS, MANAGER, M.K.A.M. HIGH SCHOOL,
PALLANA-690 515, ALAPPUZHA DISTRICT.

2. A. HAMEED,
HIGH SCHOOL ASSISTANT (ENGLIGH), M.K.A.M.
HIGH SCHOOL, PALLANA-690 515, ALAPPUZHA DISTRICT.

3. REMYA B. NAIR,
HIGH SCHOOL ASSISTANT (HINDI), M.K.A.M.
HIGH SCHOOL, PALLANA-690 515, ALAPPUZHA DISTRICT.

4. R. SANAL KUMAR,
FULL-TIME MENIAL, M.K.A.M. HIGH SCHOOL,
PALLANA-690 515, ALAPPUZHA DISTRICT.

5. AMEENA VAHID,
FULL-TIME CONTINGENT MENIAL, M.K.A.M.HIGH SCHOOL,
PALLANA-690 515, ALAPPUZHA DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM.

3. THE DEPUTY DIRECTOR OF EDUCATION,

ALAPPUZHA.

4. THE DISTRICT EDUCATIONAL OFFICER,
ALAPPUZHA.

BY G.P. SRI SANDESH RAJA.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, ALONG WITH WA NO. 223 OF 2007 & 1558/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN &
V.K.MOHANAN, JJ.

W.A.NOS.222, 223 & 1158/2007

Dated, 6th August, 2007.

JUDGMENT

Radhakrishnan, J.

W.A.No.223/2007 arises from the judgment in WPC 11645/2006 and W.A.Nos 1558/2007 and 223/2007 arise from the judgment in WPC 27175/2006. W.P.Cs were heard together by a learned Single Judge and disposed of by a common judgment.

2. WPC 27175/2006 was filed seeking a writ of mandamus directing the 4th respondent District Educational Officer to grant approval of appointments of petitioners 2 to 5 made by the Ist petitioner as per Exts. P7, P8, P9 and P10 in M.K.A.M High School, Pallana and also for a direction to disburse the salary and allowances to them within a time limit. The Ist petitioner in WPC 27175/2006 is the Manager of M.K.A.M High School, Pallana and the petitioners 2 and 3 were appointed as HSA in the school and the 4th petitioner was appointed as Full Time Menial and 5th petitioner was appointed as Full Time Contingent Menials.

3. WPC 11645/2006 was preferred by one Raveendran and 2 others seeking a writ of certiorari to quash Exts.P15 and P16 orders.

Exts.P15 and Ext.P16 in WPC 11645/2006 are Exts.P4 and P5 in WPC 27175/2006. Against the petitioners in WPC 11645/2006, civil cases are pending with respect to the management of the school. As per Ext.P1 in WPC 27175/2006, G.O.(Rt.)2383/02/G.Edn. dated 26/7/2002, Thachadi Soman was authorized to act as the interim Manager of the School till disposal of the civil suits pending before the civil courts. Government also ordered that Thachadi Soman should not make any appointment in the School and he has no other rights of the manager except to render the normal day to day affairs of the school. Various orders have been passed by the Civil Court regarding the management as well as appointment. One of such orders of the Civil Court is Ext.P12 in OP 23612/2002. O.P.No.23612/2002 was preferred by the 2nd petitioner in O.P.11645/2006 challenging G.O dated 26-7-2002. The Single Judge has ordered that any appointment in the school shall be subject to the orders of the Munsiff in O.S.146/2000. O.S. 146/2000 was subsequently decreed on 23-12-2005. The learned Munsiff had made it clear that in the civil suit which was disposed of, there was no pleadings with regard to the management of the school. Against the decree in O.S. 146/2000, A.S.36/2006 was preferred by Raveendran and others. I.A.171/2006 was also preferred in that

appeal. That application was disposed of by the District Judge stating as follows:

> " In the result the application is allowed and the operation of the decree and judgment passed by the court below in O.S. 146/2000 is stayed pending disposal of the appeal. It is made clear that this stay order will not give any right to the appellants 1 and 2 to interfere with the management of the Mahakavi Kumaranasan Memorial High school, Pallana which is now being managed by the respondents 4 and 5 in the appeal on the basis of the orders passed by the Government. It is also made clear that it will not be a bar for the appellants to move this court for appropriate direction regarding the management of the school, if they so require by filing necessary application by impleading necessary parties to the same".

Later in the appeal preferred by Thachadi Soman and others in WA 222/2007, as per Ext.P4 order dated 23-1-96, Government have issued orders permitting Thachadi Soman to make appointments in

the existing vacancies. Government noticed that civil suit was decreed on 25-2-2005 in favour of Thachadi Soman. Consequently, he has become a full-fledged manager. Later Government passed Ext.P5 order dated 23-2-2006 according sanction to Thachadi Soman to fill up existing and arising vacancies which was challenged in WPC 11645/2006. The learned Single Judge considered the rival contentions and disposed of all the WPCs holding that as regards Exts.P15 and P16 orders, and Exts.P4 and P5 in the other O.Ps, it was stated that 5th respondent, Thachadi Soman shall not derive any benefit out of those orders. He has to necessarily abide by the directions that had already been passed and are likely to be issued by the Addl.District Court from time to time if and when such a motion is made before that court. We are not expressing any opinion regarding various contentions raised by the parties before the civil court. We are now concerned with the question as to whether petitioners 2 to 5 in WPC 27175/2006 are entitled to get salary and other service benefits pending disposal of the suit. The Single Judge while disposing of the WPCs stated that petitioners 2 to 5 shall be allowed to draw salary on executing a bond undertaking to reimburse the same if ultimately it is found that they are not entitled to get salary. Against that part of the direction of the Single Judge,

Petitioners 2 to 5 in WPC 27175/2006 have filed WA 222/2007.

4. Learned Government Pleader as well as Petitioners 2 to 5 in WPC 27175/2007 contended that since Thachadi Soman is continuing as Manager, he is legally entitled to effect appointments and consequential appointment of petitioners 2 to 5 are valid appointments and hence the D.E.O. is legally entitled to consider as to whether approval can be granted in the matter of appointment of petitioners 2 to 5. Government Pleader has submitted that the Single Judge committed an error in giving a direction to disburse salary to petitioners 2 to 5 on executing bond. Government Pleader submits that salary can be disbursed only if appointments are approved, we find considerable force in that submission. In our view, DEO has to consider whether appointments of petitioners 2 to 5 are validly made and if so whether approval can be granted and salary can be disbursed to petitioners 2 to 5. We are also in agreement with the learned counsel appearing for the appellants in WA 222/2007 that in the instant case, the dejure doctrine can be applied. When such doctrine can be applied was examined by this court in the decision reported in **Manager, St.Mary's H.S. v. Beji Abraham** (2002(1) KLT 406) which was followed in **Somanatha Pillai v. State of Kerala** (2007 (1) KLT 127) effecting appointments. We have also noticed

that in Exts.P4 and P5 orders passed by the Government and the interim order of the civil court in A.S.36/2002, there is no interdiction in granting permission to the Ist petitioner in effecting appointments in the school. If sufficient teachers are not appointed, the students will suffer. We therefore find no error in permitting the Ist petitioner to effect appointments.

5. In the circumstances, we are inclined to allow W.A.Nos.1558/2007 and 222/2007 and direct the DEO to examine whether appointment of petitioners 2 to 5 can be approved. We make it clear, the management dispute between Thachadi Soman as well as the petitioners in OP 11645/2006 has to be decided by the civil court. The D.E.O. will pass appropriate orders on the question of approval within a period of two months from the date or receipt of copy of this judgment. With the above observation, WA 223/2007 is closed.

K.S. Radhakrishnan, Judge.

V.K.Mohanan, Judge.

kvm/-

K.S.RADHAKRISHNAN &

V.K.MOHANAN, JJ

WA NOS.22, 223 & 1558/2007

JUDGMENT

6-8-2007.